

REPORT OF BAR ADMISSIONS REVIEW COMMISSION

Supreme Court of Kentucky

Prepared by the Bar Admissions Review Commission
Co-Chaired by Supreme Court Justice Bill Cunningham
and Supreme Court Justice Daniel J. Venters





Report of the Bar Admissions Review Commission – July 2015

We are pleased to present the *Report of the Bar Admissions Review Commission*. The Supreme Court of Kentucky created the Bar Admissions Review Commission in 2012 to review the process followed in Kentucky to evaluate the qualifications of those who apply to practice law. The Commission was also asked to recommend any needed improvements to the current system.

The Commission members approached this responsibility with much energy and interest, meeting regularly from November 2012 through April 2015. Over the course of two and a half years, the Commission examined the current standards; met with the deans of Kentucky's three law schools and with other law school professors; sought advice and ideas from attorneys and law school representatives in other states; and asked for input from Kentucky attorneys not on the Commission.

The result is a comprehensive examination of Kentucky's Bar Admissions process. This report provides a summary of where Kentucky is today and offers recommendations to modernize the Bar Admissions system by making it more effective and more attuned to current public interests.

As co-chairs of the Bar Admissions Review Commission, we want to thank the members for their dedication to this important task. We invite Kentucky's legal community to review these recommendations and provide comments and feedback to the justices of the Supreme Court.

A handwritten signature in black ink, appearing to read "Bill Cunningham".

*Justice Bill Cunningham, Co-Chair
Supreme Court of Kentucky*

A handwritten signature in black ink, appearing to read "Daniel J. Venters".

*Justice Daniel J. Venters, Co-Chair
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**Supreme Court of Kentucky
Bar Admissions Committee
July 2015**

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Report of Bar Admissions Review Commission

I. Overview

In 2012, the Supreme Court of Kentucky established the Kentucky Bar Admissions Review Commission to assess the strengths and weaknesses in Kentucky's current bar admission system and to recommend improvements for any inadequacies in the existing process.

A. Commission Purpose

To assess the current standards and processes used to determine whether an individual is qualified to practice law in the Commonwealth of Kentucky; to determine whether these standards and processes are still effective in serving the best interest of the general public; and, to advise the Supreme Court of Kentucky on measures that could be undertaken to improve the Court's ability to ascertain the fitness and competence of individuals seeking to practice law.

B. Commission Membership

Justice Bill Cunningham and Justice Daniel J. Venters co-chaired the Commission, which consisted of one lawyer from each Supreme Court District who served as a member based on their experience and involvement in the day-to-day practice of law. The District members were Jennifer L. Lawrence, Michael M. Pitman, Bradley P. Rhoads, Martha A. Rosenberg, Robert A. Rowe, Virginia H. Snell, and Allen C. Trimble. The Clerk of the Supreme Court of Kentucky, Susan

Stokley Clary, and the Director of the Kentucky Office of Bar Admissions, Elizabeth Feamster, served as ex-officio members of the Commission.

C. Process

The Commission met regularly beginning November 12, 2012 and continuing through April 2015.

1. The Commission discussed the current standards and processes for admitting lawyers to practice law under SCR 2, including the bar examination and the character and fitness process. Ms. Feamster, Grant Helman, Chair of Character and Fitness Committee, and Eric Ison, Chair of the Board of Bar Examiners, shared their experience and concerns about the process.
2. The Commission met with the Deans of Kentucky's law schools and other law school professors, including Professor Leslie W. Abramson of the University of Louisville Brandeis School of Law, and discussed at length their perspectives on the many issues related to educating students and preparing them for admission to the practice of law.
3. The Commission considered the "Diploma Privilege," which excuses graduates of state law schools from having to take the bar exam, but requires graduates of out of state law schools to take the exam. Wisconsin currently provides a Diploma Privilege that exempts Wisconsin law school graduates from having to take the bar exam, but requires out of state graduates to take the exam. The Commission heard from Honorable Jacquelyn Rothstein, Director of Wisconsin's Office of Bar Admissions, who explained how the Diploma Privilege works in

- Wisconsin. The Commission also considered a meaningful opposing perspective offered by Honorable Ancil Ramey of West Virginia. He explained problems in allowing a Diploma Privilege and why West Virginia ceased to allow it. Mr. Ramey is a former West Virginia Supreme Court Clerk and currently serves as a bar examiner in that state.
4. The Commission considered the pros and cons of allowing students to take the bar exam during their last semester of law school. Arizona allows third-year students to take the bar exam early if the student is expected to graduate within 120 days of the exam and meets certain other criteria. The Commission considered the merits of the Arizona plan.
 5. The Commission discussed proposed changes suggested by Public Advocate Edward C. Monahan to SCR 2.112, "Limited admission for attorneys in a public defender, legal services program or office of a Commonwealth or county attorney."
 6. The Commission met with Dr. Walker Slone, to understand differences and similarities between how lawyers are educated and qualified and how the medical profession educates and licenses physicians. Dr. Slone is a physician with Central Baptist Hospital in Lexington and is a former law clerk for the Supreme Court of Kentucky. Serving as both an attorney and physician, Dr. Slone ably explained the differences in qualifying for each profession.
 7. The Commission met with Judy Gunderson, Deputy Director of Testing for the National Conference of Bar Examiners. In her presentation, Ms. Gunderson explained the role of the NCBE and the testing and support it can provide to the

bar admission process. She responded to questions about the nature of services available for purchase from the NCBE, including the Uniform Bar Examination, adopted by a minority of states, and the Multistate Performance Test, which tests practical skills and has been adopted in most states.

8. The Commission members sought and received statewide input from attorneys practicing in each member's District and read published materials relevant to the issues before the Commission. Such matters were then discussed with the full Commission.

II. Summary of Conclusions

After considering all the material and information received for more than a two-year period, the Commission unanimously makes the following recommendations and proposes the included amendments to the Rules of the Supreme Court:

- A.** The Court should amend SCR 2.080(1) and eliminate the following subjects from testing on the bar examination:

1. Conflict of Laws,
2. Negotiable Instruments under the Uniform Commercial Code (but retain Sales and Secured Transactions under "Contracts"),
3. Administrative Law, and
4. Federal Taxation.

The Court should also replace "Domestic Relations" with the modern practice usage "Family Law."

- B.** The Court should add a new section to SCR 2.080 adopting the Multistate Performance Test and allowing the Board of Bar Examiners, in its discretion, to include 1 or 2 Multistate Performance Test questions on the bar examination. If the Board decides to include 1 Multistate Performance Test question, then 9 additional essay questions should be used. If the Board decides to include 2 Multistate Performance Test questions, then 6 additional essay questions should be used.
- C.** The Court should amend SCR 2.080 to raise the passing score on the bar examination as follows:
1. The passing score for the Multistate Professional Responsibility Exam (“MPRE”) should be raised from 75 to 80.
 2. The passing score for the Multistate Bar Exam (“MBE”) should be raised from 132 to 135.
 3. The Court should also require an applicant for the Kentucky bar exam to pass the MBE, the MPE, and the essay portion of the examination at the same time. This would eliminate the current option of allowing an applicant who passed only one part of the exam to have three years to pass the remaining sections.
 4. The Court should allow an applicant who is licensed to practice in another state, but is not eligible for reciprocity in Kentucky, to transfer a passing MBE scaled score of at least 135 from a test taken within the last 3 years of the date of the applicant’s Kentucky bar exam.

- D. The Court should amend SCR 2.014 to allow eligible applicants to take the Kentucky bar exam during the last law school semester as long as the student is expected to graduate with a Juris Doctorate within 120 days of the examination.
- E. The Court should amend SCR 2.080(7) to clarify that all bar exam graders have the same minimum qualifications as a circuit judge.
- F. The Court should tighten the character and fitness certification that law school Deans are required to file for applicants.
- G. The Court should amend SCR 3.640(5) and (6) to establish a lawyer to lawyer mentoring program as an option within the New Lawyer Program.
- H. The Court should revise SCR 2.112 with some of the changes requested by the Department of Public Advocacy.
- I. The Court should not adopt the “Diploma Privilege.”
- J. The Court should not adopt the Uniform Bar Examination.

III. Basis for Recommendations

A. Reduce the number of subjects tested on the bar exam

1. Deans of the law schools requested a reduction in the number of subjects currently tested on the bar exam. SCR 2.080(1) lists 14 specific test areas and concludes with a general provision, “Such other subjects as the Board may select from among questions propounded by the National Conference of Bar Examiners.”

2. The Commission considered all input and unanimously agreed that SCR 2.080(1) should be amended to reduce the number of subjects tested. The bar examination should continue to encompass the following 10 subjects and the general provision:
 - a. Contracts, including sales and secured transactions under the Uniform Commercial Code
 - b. Constitutional Law
 - c. Business Entities (Corporations, Partnerships, and/or others)
 - d. Criminal Law and Procedure
 - d. Civil Procedure
 - f. Family Law
 - g. Property (Real and/or Personal)
 - h. Torts
 - i. Estates (Wills and/or Trusts)
 - j. Evidence
 - k. Such other subjects as the Board may select from among questions proposed by the National Conference of Bar Examiners.
3. This amendment would eliminate Conflicts, Negotiable Instruments under the Uniform Commercial Code, Administrative Law, and Federal Taxation. It would retain Sales and Secured Transactions, but under the general subject Contracts. It also replaces Domestic Relations with the current practice usage "Family Law."

B. Adopt the Multistate Performance Test (“MPT”)

1. The Commission considered examples of the MPT that the National Conference had actually used. The MPT is designed to test an examinee’s ability to use fundamental lawyering skills in a realistic situation and complete a task that a beginning lawyer should be able to accomplish. The MPT is not a test of substantive knowledge; rather, it is designed to evaluate certain fundamental skills lawyers are expected to demonstrate regardless of the area of the law in which the skills arise.
2. The Commission perceived a consensus among practicing attorneys in Kentucky that practical skill levels should be tested in a more effective manner.
3. Amending SCR 2.080 to require the MPT could encourage law schools to teach skills more intensely, particularly because the ABA now requires 6 hours of “skills” in curricula.

C. Improve Passing/Admission Standards

1. Raise the passing score for the Multistate Bar Exam (“MBE”) to a scaled score of 135 and the Multistate Professional Responsibility Exam (“MPRE”) to 80.
 - a. The current passing score for the MBE is scaled score of 132 and 75 for the MPRE.
 - b. Most jurisdictions require a passing score of at least 135 for the MBE and 80 for the MPRE.

- c. Raising the scores to pass the bar examination also would discourage applicants from taking the Kentucky bar exam simply because it is easier to pass than the exams in other states that impose a more difficult pass rate.
2. The Court should require applicants taking the bar exam to pass every part of the exam – the MBE, the MPT (if adopted) and the essay exam – at the same time. This would eliminate the current practice of allowing applicants to pass only one part of the examination and then have three years to pass the remaining part. This change will make the examination more fair to all participating.
3. The Court should allow an attorney who is licensed to practice in another state, but not eligible for reciprocity in Kentucky, to transfer a passing MBE score of at least 135 from a test taken within the last 3 years of the date of the applicant's Kentucky bar exam.

D. Permit applicants to take the bar exam in their last semester, including the summer session, of law school

1. Law school deans are concerned about the impact of allowing the bar examination to be taken by applicants during their last semester of law school, but the Commission, on balance, concludes that it should be allowed. The Arizona bar examiners permit students to take the February examination under certain criteria and their experience has been positive.
2. Allowing law students, who often face sizeable student loan debts, to take the bar examination during their last semester will curb the delay in being permitted to work as a lawyer.

3. Arizona imposes criteria that applicants must meet before they can take the exam in February. For example, at the time of the early exam the applicant has to be in good standing at an ABA accredited law school and to have satisfied all graduation requirements except for 8 hours. Arizona allows students to take the exam when they are expected to graduate with a Juris Doctorate within 120 days of the exam.
4. While allowing an exam during the last semester may involve some changes in education, such as limiting the opportunity to take electives during the last semester, the decision to take the exam before graduation would be voluntary, and the Court could impose standards similar to those adopted in Arizona.
5. Permitting students to take an exam before graduation also might indirectly motivate law schools to devote more attention to practical skills during the last semester, particularly if the Court allows the bar examiners to include questions from the Multistate Performance Test in the bar examination. It also may lead law schools to consider offering a preparatory course for taking the bar exam.
6. The Court can provide for this change and impose clear standards by adding a new subsection (5) to SCR 2.014. The Commission proposes the following language:

SCR 2.014(5)

- (5.) An applicant may be allowed to sit for the Kentucky bar examination prior to the award of a Juris Doctorate degree if the applicant:
 - a. Is a currently enrolled student in good standing at a law school fully or provisionally approved by the American Bar Association;

- b. Is expected to graduate with a Juris Doctorate Degree within one hundred twenty (120) days of the first day of the early exam administration;
- c. Provides by the date established by the Office of Bar Admissions, to the Committee on Character and Fitness on a form provided by the Committee, an affidavit attested to by the applicant and the law school that they meet the above criteria. The law school's decision whether to certify that the student meets the criteria is final and shall not be subject to review by the Committee or the Court.

No applicant shall be recommended to practice law until graduation or satisfaction of all requirements for graduation, and completion of all requirements for graduation, and completion of all requirements for admission to the practice of law under these rules. If an applicant under this subsection has not graduated with a Juris Doctorate degree within one hundred twenty (120) days of the first day of early exam administration, all parts of the Kentucky bar examination, including the score on the examination shall be void and the applicant's examination score shall not be disclosed for any purpose. Results of the early examination testing may not be released until such time as satisfactory proof of an award of a Juris Doctorate degree, as determined by the Court, is provided to the Committee. An early examination which is voided shall count as an examination attempt pursuant to SCR 2.080(4).

At the completion of the Juris Doctor requirements and within sixty (60) days after graduation, the applicant must cause his or her law school, dean or registrar, to submit to the Committee on Character and Fitness proof of graduation, showing his or her Juris Doctorate was confirmed within the one hundred twenty (120) days of the first day of early exam administration. Failure to complete the course of study within one hundred twenty (120) days of the examination or to provide evidence of graduation within the additional sixty (60) days shall render the applicant's score void. An extension of the 120 day requirement may be given by the Board of Bar Examiners in case of a personal emergency or hardship which might substantially impair the student from graduating within that time due to no fault of his or her own.

E. Qualifications to Grade the Exam

1. The Board of Bar Examiners appoints graders to assist with the time-consuming process of grading exams, upon court approval.
2. The Court should amend SCR 2.080(7) to clarify that graders must have the same minimum qualifications as a circuit judge.

F. Bridge gap between law school admission and character and fitness criteria

1. A person can be admitted to law school and simultaneously not be deemed "fit" to practice after a character and fitness investigation.
2. The Court can address this problem through an amendment to SCR 2.022(4).

Under the current language of SCR 2.022(4), the Dean certifies “as to the character and fitness of each applicant.” This general statement has led to blanket certification of a class, rather than meaningful individual certification from the Dean of the law school.

3. The Court should amend SCR 2.022(4) to expressly require individual certification. The Commission proposes the following language:

SCR 2.022(4)

“(4) The Dean of each law school shall certify to the Committee as to the character and fitness of each applicant on an individualized basis. This certification must encompass any misconduct prior to or during the applicant’s time at law school. Misconduct includes, but is not limited to, any of the conduct listed in Supreme Court Rule 2.011(3). The Dean of each law school must certify each applicant’s character and fitness by completing Form 000, titled Dean’s Certification Form.” Each applicant shall pay all additional investigation expenses that exceed the \$200.00 fee required by the Committee in conducting the background investigation necessary for certification of eligibility. These costs are incurred when circumstances require a more intensive background investigation. The cost of any record, document or inquiry concerning an application or transcript of record as a result of a hearing shall be paid by the applicant. Any additional expenses incurred must be paid prior to the release of any examination results for the applicant.

4. A Proposed Dean’s Certification Form is attached.

G. Establish a Lawyer to Lawyer Mentoring Program as an Option in the New Lawyer Program Requirement

1. SCR 3.640 governs the new lawyer program and sets forth requirements that should be satisfied within the first 12 months after the date of admission.
2. Many graduating law students today have difficulty finding jobs and for this or other reasons may start practicing law on their own or with other young lawyers without easy access to guidance from more experienced attorneys.
3. The Ohio bar has an excellent mentoring program that has proven to be meaningful to the young lawyers who participate,
4. The Commission recommends that the Court amend SCR 3.640 to allow a newly admitted attorney to participate in a voluntary mentoring program. It would simply be an alternative option in satisfying the New Lawyers Training instruction requirement.
5. The Commission proposes the following amendment to add new sections to SCR 3.640 (5) and (6):

SCR 3.640(5)(a) and (6)(a)

- (5.) The Commission or other provider accredited under SCR 3.640(2) may charge a reasonable registration fee approved by the Court for the New Lawyer Program.

(a) An attorney newly admitted to the practice of law may satisfy, in part, the New Lawyers Training instruction requirement of division (1) of this section by participating in and successfully completing the Supreme Court Lawyer to Lawyer Mentoring Program for a total

of six (6) credit hours, provided the attorney also completes two (2) credit hours of instruction on ethics and law practice management as set forth in division (4) of this section.

- (6.) Each individual attending the New Lawyer Program shall certify to the Director for CLE the completion of the Program on the attendance certificate provided for that purpose. Such certification shall be submitted to the Director for CLE upon completion of the Program and in no case shall the certification be submitted later than 30 days after completion of the Program. Continuing legal education credits awarded for the Program shall be applied to the educational year in which the Program is attended, and if applied to a year in which the individual so attending is otherwise exempt from CLE requirements under SCR 3.665(c), then said credits shall carry forward in accordance with SCR 3.645(3).

(a) An attorney subject to this rule who completes more than the number of New Lawyer Program credit hours required under division (1) of this section by completing both the New Lawyer Program and the Lawyer to Lawyer Mentoring Program may be awarded a maximum of six (6) general credit hours to carry over to the next CLE compliance period.

H. Changes to SCR 2.112-Limited admission for attorney participants in a public defender, legal services programs, or office of Commonwealth's or county attorney.

1. The Department of Public Advocacy requested certain revisions to the limited admission rule in SCR 2.112, which is an invaluable hiring and recruiting tool for the DPA.
2. Currently the application for this type of limited admission is nearly identical to the application to take the bar exam. It is a burdensome procedure and, therefore, it is reasonable to simplify this process to accelerate its use. Since limited admission is valid for a limited duration, the applicant will satisfy the rest of the requirements when applying to take the bar examination. Moreover, as the applicant has passed the bar in another state, he or she could be admitted to practice pro hac vice anyway. The Commission recommends that the limited admission applicant provide a Certificate of Good Standing from his or her home state or, if they have just taken the bar, a copy of his or her home state's character and fitness finding in order to receive limited admission. They will then submit all other requested materials when they apply to sit for the Kentucky bar exam.
3. The Commission was asked to increase the duration of the limited admission from 18 months to 24 months. The Commission recommends adopting said change and amending the second sentence of SCR 2.112(4) as follows:

“Admission to practice under this rule shall expire after 24 months, upon termination of the attorney’s employment with the program or office, or upon failure of the bar examination, whichever shall first occur.”
4. The Commission recommends that all fees associated with the limited admission be disclosed at the time of application.

I. Reject the Diploma Privilege

1. The Commission carefully considered information from Honorable Jacquelyn Rothstein about the Wisconsin Diploma Privilege and from Honorable Ancil Ramey about the problems that led West Virginia to eliminate the Diploma Privilege.
2. The Commission opposes the Diploma Privilege for a number of reasons. Law school experiences can vary from student to student depending on the law school itself and other factors. The Diploma Privilege eliminates the last “gate” – the bar exam – that attempts to screen unqualified applicants. It also discriminates against graduates from out of state schools and at bottom is only as good as the worst professor.
3. Having a Diploma Privilege also could adversely affect the reciprocity arrangements that Kentucky currently enjoys with several states. Those jurisdictions would likely not extend Kentucky that courtesy if the Court eliminated the bar exam for the graduates of Kentucky law schools and required students from non-Kentucky schools to take the bar exam.

J. Reject the Uniform Bar Exam

1. A minority of other states (14) have adopted the Uniform Bar Exam.
2. The Uniform Bar Exam does not establish a true “national” bar exam because participating states still establish their own exam pass rates and continue to grade the essay portion of the exam. Each state also sets its own character and fitness requirements.

3. Kentucky now uses the MBE, six essay questions from the National Conference's Multistate Essay Exam (MEE), and the MPRE. Adopting the Uniform Bar Exam would leave Kentucky with no direct control over the substance of any of the remaining essay exam questions. During her presentation for the National Conference, Ms. Gunderson acknowledged that "uniform" questions do not always match the law as applied in a particular state.
4. The Commission did not recommend adoption of the Unified Bar Examination.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bill Cunningham", written over a horizontal line.

Justice Bill Cunningham
Supreme Court of Kentucky

A handwritten signature in black ink, appearing to read "Daniel J. Venters", written over a horizontal line.

Justice Daniel J. Venters
Supreme Court of Kentucky

Dean's Certification Form

Dates of Attendance: _____ Graduation Date: _____

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